Crl. W.P. No. 473 of 2007

Present: Mr. Manjit Singh, Advocate
for the petitioner.

Mr. T.S. Salana, DAG, Punjab.

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Reply by way of an affidavit of Balwinder Singh Bajwa, PPS, DSP, Sub-Division, Jaito Camp at Kotkapura on behalf of respondents No.1 and 2 filed in Court today is taken on record.

Heard learned counsel for the parties.

The writ petition in the nature of habeas corpus has been filed for the release of the detenus as detailed in the head note of the petition. Vide order dated 03.05.2007, a Warrant Officer to be nominated by the Registry was appointed and his report was to be submitted. The report of the Warrant Officer has been filed in which it is inter alia stated that he searched the precincts of Police Station Kotkapura Distt. Faridkot on 03.05.2007 at 11.00 P.M. Out of the detenues one Surjit Singh was found standing behind the toilets made in the open courtyard near the entry gate and the other Jullunder Singh was standing in a room in the Police Station. The SHO S. Balwinder Singh, Sub Inspector informed the Warrant Officer that there was a report lodged on the complaint of one Bikar Singh son of Banta Singh against the detenus which was recorded vide DDR No.24 dated 2.5.2007 at 7.05 PM for proceedings against them under Section 107, 151 CrPC. As per the DDR and the Kalendra, out of the detenus, three namely Jagir Singh, Ram Singh and Buta Singh had appeared before the Court of Sub Divisional Magistrate and had been released on their furnishing interim surety. Two of them including Surjit Singh were not traced. Surjit Singh, even though he was being proceeded in the aforesaid DDR he was allowed to leave the Police Station by the SHO as it was stated that he had been

reported untraced before the Sub Divisional Magistrate who would summon him, if required. Jullunder Singh was not wanted in any case, therefore, he was set free at liberty.

In terms of the reply filed by by way of an affidavit of Balwinder Singh Bajwa, PPS, DSP, Sub-Division, Jaito Camp at Kotkapura, it has been submitted that Surjit Singh and Jullunder Singh along with 8/9 other persons entered the Police Station. In the meantime, the Warrant Officer came to the Police Station for execution of the order. It is submitted that they entered the room of the Police Station as a pre-planned programme to show themselves in the illegal custody of the police.

Be that at it may, the other detenus were not in the Police Station and Surjit Singh and Jullunder Singh who were found were allowed to go free. It is debatable in the facts and circumstances whether they were actually in the illegal custody or had entered the Police Station just sometime before the Warrant Officer came. This aspect is not required to be gone into in the present proceedings under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Habeas Corpus. In case the petitioner has any grievance as regards the alleged illegal detention of Surjit Singh and Jullunder Singh, he may pursue his remedy in accordance with law. However, a writ in the nature of habeas corpus is not liable to be issued.

In the circumstances, in the light of the above observations, the criminal writ petition is dismissed.

(S.S. SARON)
JUDGE

10.09.2007
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